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Warren Havens and Polaris PNT BNC (a Delaware Public Benefit Corp.)

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6 **UNITED STATES BANKRUPTCY COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION**

8 In re:

9 LEONG PARTNERSHIP,

Putative Debtor.

Case No.: 16-42363 CN

Chapter 11

**PETITIONERS' STATUS REPORT
AND NOTICE TO PARTIES-IN-INTEREST**

**[DECLARATION OF WARREN HAVENS
FILED CONCURRENTLY HERETO]**

STATUS CONFERENCE

Date: October 31, 2016

Time: 10:00 a.m.

**Place: 1300 Clay Street
Courtroom 215**

14 Petitioning creditors Warren Havens and Polaris PNT BNC (collectively, the
15 "Petitioners") by the through their undersigned counsel, hereby submit this status report and
16 notice to parties-in-interest ("Status Report"). At the status conference, Petitioners respectfully
request the Court:

17 1. issue a simple order for relief based on the fully briefed *Request to Enter Order*
18 *for Relief* [Dkt. No. 44], *Arnold Leongs Opposition to Petitioning Creditors Request to Enter*
19 *Order for Relief* [Dkt. No. 47], and *Reply to Opposition to Request to Enter Order for Relief*
[Dkt. No. 49];

20 2. set a deadline to complete all non-expert discovery no later than February 1, 2017

1 for matters related to the alleged facts and asserted positions of the currently active parties in this
2 case (but not to other matters)¹;

3 3. set a deadline to file all dispositive motions no later than March 1, 2017; and

4 4. provide any other relief the Court deems appropriate based on Petitioners' filings
5 to date.

6 By way of background, this is a unique involuntary bankruptcy case that involves, among
7 other things, wireless-service licenses issued by the FCC and valued in excess of \$500 million
8 prior to a motion publicly filed by Arnold Leong in 2015 for a receivership in a state court action
9 commenced in 2002, *Leong v. Havens et al.*, *Superior Court of the State of California, County of*
10 *Alameda, Case No. 2002-070640* ("State Action").

11 This unique collection of nationwide FCC issued licenses are owned by a group of
12 licensee companies commonly referred to as the "PNT Companies."² These are in the sub-GHz
13 radio frequency ranges, needed for long-range communication and new forms of wireless
14 services critical for government and industry purposes, especially the precise Position, Timing,
15 and Navigation system. The significance and success of the PNT Companies is shown, in large
16 part, by a series of favorable FCC and court decisions over the last two decades. Prior to the
17 State Action, this success resulted in valuation increases of the PNT Companies from several
18 million dollars in initial capital to well over \$500 million.

19 Petitioners assert that these licenses, among other things, are property of the Debtor's

20 ¹ Petitioners intend to propound formal discovery. Notice is provided to the Receiver, Arnold
21 Leong, the other partners named in Petitioners' filings, and all other actual or portential parties-
in-interest of their duty to preserve all relevant information under applicable bankruptcy and
non-bankruptcy laws. The proposed February 1 and March 1, 2017 dates are based on the
assumption that responding parties to discovery do not cause unnecessary motion practice and
the Court issues relief as appropriate in sufficient time to protect the asserted property of the
Debtor's estate.

² The "PNT Companies" is defined in Petitioners' "Statement 1" and accompanying exhibits to
the initial declaration of W. Havens [Dkt. No. 11]. Petitioner Mr. Havens was the founder, and
majority or sole owner in each of the PNT Companies.

1 estate herein. As such, any actions or purported actions in the State Action impacting property of
2 the estate must be stayed, and any such post-petition action such as sale-related motions filed by
3 the Receiver (or any other party) in the State Action are void or voidable. Petitioners reserve all
related rights.

4 This Status Report is also submitted to provide an update to this Court and notice to
5 various parties-in-interest³ of at least five post-petition sale (or sale related) motions. Post-
6 petition, one sale motion of license spectrum has been heard and approved in the State Action as
7 of the date of the filing of this Status Report (the Alstom License Sale), and the Receiver has a
8 motion to be heard by the state court for another, the PTC220 License Sale. The Receiver has
9 abandoned claims related to the MCLM-SCRRA License Sale. Declaration of Warren Havens
10 (“Havens Decl.”), ¶¶ 2 - 5.⁴ The Receiver in the State Action contends that this involuntary case
11 has no bearing on the State Action whatsoever. Havens Decl., ¶ 6. Exh. 4. Additionally, these
actions are otherwise objectionable in that they waste and devalue substantial property of the
putative Debtor’s estate. The Havens Decl. provides additional reasons to those specifically
noted herein for the relief requested in this Status Report.

12 Out of an abundance of caution, on October 14, 2016, Petitioners timely filed an

13 ³ The Status Report will be served on, among other parties, the Receiver in the State Action and
14 the FCC. The Receiver in the State Action has appeared in this bankruptcy case through counsel,
David DeGroot, Esq., at the hearing on the Debtor’s motion to dismiss this involuntary case
15 which motion was denied. [Dkt. Nos. 42, 43]. The Receiver has continued post-petition to
market, sell off, and otherwise use these licenses without regard to the automatic stay, or seeking
16 and obtaining any relief from this Court. The FCC is served as the government agency of the
FCC issued licenses -- (i) as the FCC has regulatory duties over these assets.

17 ⁴ In sum: (1) the Leong-obtained and maintained Receiver has contracted to sell substantial FCC
licensed radio spectrum that is property of the Debtor’s estate to PTC220 LLC, a freight railroad
group, for many times less than the lowest possible fair market value, at a loss in the “7-figure”
18 range, and (2) the Receiver has abandoned a claim, well-established in FCC proceedings and
decisions, that is also property of the Debtor’s estate, to all, or at least the majority of the
19 licensed radio spectrum that a company called “MCLM” is selling to the public passenger
railroad called “SCRRA” (also called “Metrolink”- the major Southern California passenger
20 railroad): this claim is worth an “8-figure” range. From these direct losses, other losses will
ramify such as in market value of the additional FCC licensed radio spectrum of the same and
related classed that are also property of the estate.

1 objection in the State Action to the PTC220 License Sale motion filed by the Receiver. The
2 objection was based primarily on the violation of the automatic stay a copy of which is submitted
3 herewith. Havens Decl., ¶¶ 2-4, Exh. 1. October 14, 2016, was also the deadline for objections
4 and comments *by the Receiver* before the FCC to the MCLM-SCRRRA License Sale. The sale
5 was conditionally granted by the FCC which the PNT Companies had, pre-receivership (and
6 prior to this bankruptcy) contested.⁵ The Receiver informed Mr. Havens that she would take no
7 action on this matter, and thus abandoned the claim described in footnote 5. Havens Decl., ¶ 5,
8 Exh. 3.

9 Further, the Receiver in the State Action filed three additional sale motions (along with a
10 motion for approval of Receiver fees and costs) and requested the State Court hear all motions on
11 or about November 22, 2016. The details relating to these three additional sale motions are not
12 yet known. Havens Decl., ¶ 8, Exh. 5. Unless an order for relief is entered, Petitioners plan to
13 file one or more motions in this Court to address these improper actions (along with other
14 potential relief) and Petitioners reserve all related rights.

15 DATED: October 24, 2016

The Financial Services and Bankruptcy Law Group

16 By: /s/ John W. Kim

17
18 John W. Kim

19 Attorneys for Petitioning Creditors Warren Havens
20 and Polaris PNT BNC (a Delaware Public Benefit
21 Corp.)

22 ⁵ Petitioners submit that the portion of the FCC grant favorable to the PNT Companies should
have been supported with certain new evidence available, as that is highly valuable to protect for
this matter and for the precedent it sets the on-going value of the FCC licenses for the PNT
Companies. Additionally, the portion of that is unfavorable should have been objected to clear
errors in that part of the FCC grant decision, and for other sound reasons. The Receiver rejected
offers Mr. Havens made to inform and assist the Receiver in such matters, where he is the person
most experienced.